

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	Case No. 1:23-mc-37-JG
Petitioner,)	
)	Hon. James S. Gwin, U.S.D.J.
v.)	
)	Hon. Jonathan D. Greenberg, U.S.M.J.
EATON CORPORATION,)	
)	
<u>Respondent.</u>)	

**MOTION FOR THE COURT TO SET DEADLINE OF 5:00 P.M. ON DECEMBER 4,
2023, FOR FILING OF SUR-REPLY**

On the evening of November 29, 2023, Eaton Corporation filed a motion for leave to file a sur-reply (ECF No. 14) responding to the United States' reply brief (ECF No. 13) in support of its petition to enforce the IRS summons at issue. Eaton's motion noted that the United States opposed Eaton's request to file a sur-reply. ECF No. 14.

The next morning, the Court granted Eaton's motion by minute entry order but did not order a deadline for Eaton to file its sur-reply. Nor did Eaton attach its proposed sur-reply to its motion for leave to file a sur-reply, or otherwise indicate when it anticipated filing that brief.

Given that sur-replies "generally are disfavored" unless the "nonmovant's ability to respond to . . . new evidence has been vitiated," *NOCO Company v. Shenzhen Valuelink E-Commerce Co., Ltd.*, 550 F. Supp. 3d 488, 499 (N.D. Ohio 2021), the United States believes that Eaton's proposed sur-reply is unwarranted and anticipated briefing as much. All of the supposedly "new" contentions in the government's reply brief were previewed to Eaton in the attached letter of October 12. *See* Exh. 1. Moreover, a summons enforcement proceeding like this one is "summary in nature." *United States v. Clarke*, 573 U.S. 248, 254 (2014).

Nonetheless, given that the Court has already granted Eaton's motion, the government respectfully requests that the Court order Eaton to file its sur-reply by 5 p.m. EST on December 4, 2023. Eaton has stated that it does not oppose the imposition of that deadline. The government further reserves the right to seek leave to respond to any new evidence or argument Eaton may offer in its sur-reply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 1, 2023, I served the foregoing document by filing it with the Court's CM/ECF system, which will deliver electronic copies to all users registered to receive such notices.

/s/ Anderson P. Heston
ANDERSON P. HESTON
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